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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,085	09/26/2000	Dutt V. Vinjamoori	49202-22USPT	5712

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EXAMINER

FULLER, RODNEY EVAN

ART UNIT	PAPER NUMBER
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2851

DATE MAILED: 09/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/670,085

Applicant(s)

VINJAMOORI ET AL.

Examiner

Rodney E Fuller

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-81 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-81 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Remarks

In the "Response to Office Action," dated June 24, 2003, the applicant makes the argument that Bergqvist teaches "the use of a light scattering detector for the purpose of detecting the presence of oil." Further, the applicant argues that this teaching is not material to the claims "which more specifically require the determination of oil content," defined to mean "the amount of oil present in a sample or particular fraction or fractions of oil." (Underline emphasis added) The examiner maintains that Bergqvist discloses the claimed invention. Table 2 and Figure 1 of Bergqvist shows the data collected from the liquid chromatograph and clearly shows the composition or "oil content" of the sample. Thus, the examiner has considered the applicant's arguments and maintains the rejection.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7 and 10-81 are rejected under 35 U.S.C. 102(b) as being anticipated by Bergqvist M et al., "Characterization of Honeysuckle (*Lonicera caprifolium* L.) Seed Oil Triacylglycerols by High Performance Liquid Chromatography and Light Scattering Detection," *Phytochemical Analysis*, vol.3, 1992, pp. 215-217.

Regarding claims 1, 10, 16-18, 24-26, 27, 28, 30, 31, 32, 35, 44-47, 50, 55, 56, 58, 59, 60, 64, 66-68, 70, 72, 73, 75, and 81, Bergqvist discloses an apparatus / method for “extracting oil from a seed using a solvent (column 2, 3rd paragraph, line 6); evaporating said solvent (column 2, 3rd paragraph, line 9) in a stream of gas to form oil particles; directing light into said stream of gas and said oil particles, thereby forming reflected light from the oil particles, detecting said reflected light; and determining said oil content based on said reflected light (column 3, 2nd paragraph, lines 12-13).”

Regarding claims 5-7, 52, 53, 57, 62, 69, 78 and 79, Bergqvist discloses that the solvent comprises CHCl_3 :MeOH (column 2, 3rd paragraph, line 6) or acetonitrile (column 3, 2nd paragraph, lines 7-8).

Regarding claims 11, 54 and 80, Bergqvist discloses “wherein said stream of gas comprises nitrogen.” (column 2, 3rd paragraph, line 10)

Regarding claim 12, Bergqvist discloses “the step of introducing said solvent into said stream of gas a rate between 0.3 and 5 milliliters per minute.” (column 3, 2nd paragraph, line 10)

Regarding claims 13, 50, 63, 65, 71, 74 and 76, a liquid chromatograph as employed by Bergqvist may inherently use a laser as the light source. (See Anderson, Jr., et al. – US2001/0001575).

Regarding claims 14, 48, 51 and 77, a liquid chromatograph as employed by Bergqvist may inherently use a silicon photodiode to detect the reflected light. (See Anderson, Jr., et al. – US2001/0001575).

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Regarding claim 15, Bergqvist discloses wherein the system temperature is maintained. (column 3, 2nd paragraph, lines 11-12)

Regarding claims 27 and 29, Bergqvist discloses that the seeds are ground. (column 2, 3rd paragraph, line 8).

Regarding claims 44, 46, 61 and 70, Bergqvist discloses a nebulizer. (column 3, 2nd paragraph, line 14)

Claims 2-4, 19-23, 32-43 and 45 are directed to the intended use of the claimed apparatus / method. It has been held that a recitation with respect to the manner in which a claimed apparatus / method is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus / method satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergqvist M et al., "Characterization of Honeysuckle (*Lonicera caprifolium* L.) Seed Oil Triacylglycerols by High Performance Liquid Chromatography and Light Scattering Detection," *Phytochemical Analysis*, vol.3, 1992, pp. 215-217.

Regarding claims 8 and 9, Bergqvist discloses the claimed invention except for (claim 8) “wherein 0.5 to 50 ml of said solvent is use” and (claim 9) “wherein 1 to 3 ml of said solvent is used.” It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the claimed amount of solvent, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Facciotti (US 6,547,711) teaches that a liquid chromatography may be used "to measure the oil content." (Underline emphasis added) (column 5, lines 14-16)

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney Fuller whose telephone number is (703) 306-5641. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Russ Adams, can be reached on (703) 308-2847.

Rodney Fuller
Primary Examiner

A handwritten signature in black ink, appearing to read 'R. Fuller', is written over the printed name and title of the examiner.

September 4, 2003